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UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Kenneth J. Hines

Group Art Unit: 2122

Application No. 09/888,061

Filed: June 21, 2001

For: **EVOLUTION DIAGRAMS FOR DEBUGGING DISTRIBUTED
EMBEDDED SOFTWARE APPLICATIONS**

Date: December 17, 2001

Examiner:

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OFFICE OF PETITIONS

01/24/2002 HDENESS1 00000030 09888061

01 FC:182

130.00 DP PETITION UNDER 37 CFR § 1.182

TO THE COMMISSIONER FOR PATENTS:

In response to two Notices of Incomplete Reply (Non-Provisional) dated November 26, 2001 and November 30, 2001, applicant submits this Petition Under 37 CFR § 1.182 to request that the Office accept submission of the attached Corrected Drawing Figure 41. These drawing Figures, though incorrectly labeled, were present in the application as filed. The Commissioner, therefore, should accord this application the original filing date of June 21, 2001. A check for \$330, which includes \$130 for the petition fee for a petition under 37 CFR § 1.182 and \$200 for a 2-month extension of time for responding to the Notice to File Missing Parts, dated August 15, 2001, is enclosed as required under 37 CFR 1.17.

The Notices of Incomplete Reply (Non-Provisional) first indicate that substitute drawings are required because "more than one figure is present and each figure is not labeled 'Fig.' with a consecutive Arabic numeral (1, 2, etc.) or an Arabic numeral and capital letter in the English alphabet (A, B, etc.) (see 37 CFR 1.84(u)(1))". The Notices of Incomplete Reply (Non-Provisional) then indicate that Figures 41A, 41B, 41C, and 41D appear to have been omitted from the application. Both Notices apparently refer to the same issue with Fig. 41. Fig. 41 as originally filed included four distinct units that were not individually referenced with an Arabic numeral and a capital letter. The specification, as filed, referred to the four distinct units of Fig. 41, as filed, as Figs. 41A, 41B, 41C, and

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DAH: 194455 Name/Number: 09888061 \$200.00 CR
FC: 704

41D, although Fig. 41, as mentioned above, did not label the individual units. The drawings were not omitted--they were just mislabeled.

In support of this petition, applicant contends that Drawing Figures 41A, 41B, 41C, and 41D were present in the filed application as presented below:

1. Applicant files this petition within the two month deadline provided in each of the Notices of Incomplete Reply (Non-Provisional), and within the second month extension to the August 15, 2001 Notice to File Missing Parts which was also designated as a deadline in the Notices of Incomplete Reply (Non-Provisional).

2. As filed with the patent application on June 21, 2001, Figure 41 (prior art) was depicted in one drawing sheet containing four distinct units and referenced as "Figure 41."

3. Pages 7, 8 and 71 of the specification refer to the four units of this drawing figure individually as Figs. 41A, 41B, 41C, and 41D. Although the reference characters differ between the specification and the drawing figure, the content of the entire drawing figure is present in the application as originally filed.

4. To overcome the reference character disparity between the specification and the drawing figure, applicant submits a corrected drawing figure which adds only the reference characters A, B, C, and D to the individual units of the drawing figure, this submission should also address the substitute drawing requirement mentioned above.

5. Applicant contends that treating the above drawing issues as omitted items was an improper response by the OIPE. MPEP §601.01(g) states that:


Applications are often filed with drawings with several views of the invention where the views are labeled using a number-letter combination, e.g., Fig. 1A, Fig. 1B, and Fig. 1C. OIPE will not mail a "Notice of Omitted Item(s)" if a figure which is referred to in the specification by a particular number cannot be located among the drawings, if the drawings include at least one figure labeled with that particular number in combination with a letter. For example, if the drawings show Figures 1A, 1B, and 1C and the brief description of the drawings refers only to Figure 1, this is an error in the specification which must be corrected, rather than an application filed without all figures of drawings.

The present situation is analogous to that described in the above passage. As filed, a drawing sheet that is labeled as Fig. 41, contains "more than one figure," while the specification as filed refers to Figs. 41A-41D, *i.e.* more than one view of Figure 41. This is an error that should be corrected through an amendment to the drawing figures. It is not an application filed without all figures of drawings.

6. Copies of the Drawing Figure 41 (as originally filed with the application) and Corrected Drawing Figures 41A, 41B, 41C, and 41D (with the reference character corrections) are enclosed.

7. Applicant maintains that this correction adds no new material to the application and that this drawing correction is supported by adequate disclosure in the specification.

Respectfully submitted,

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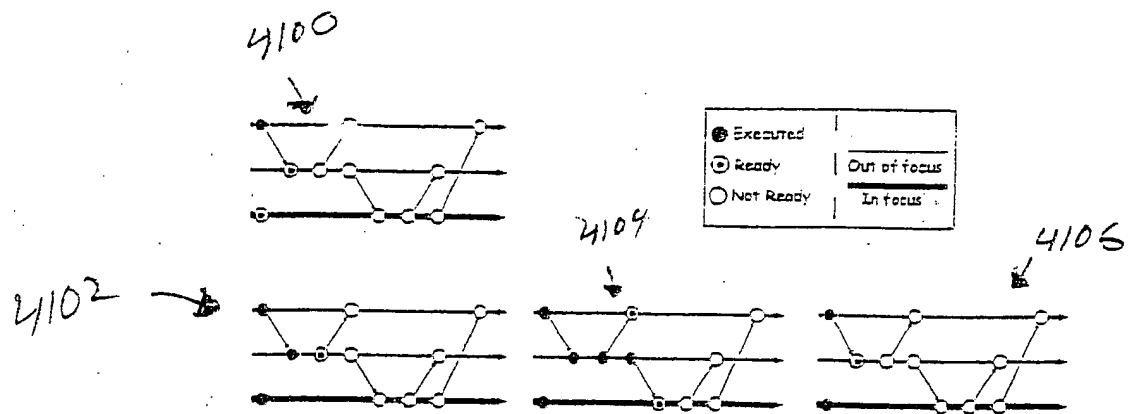


Figure 41

(prior art)

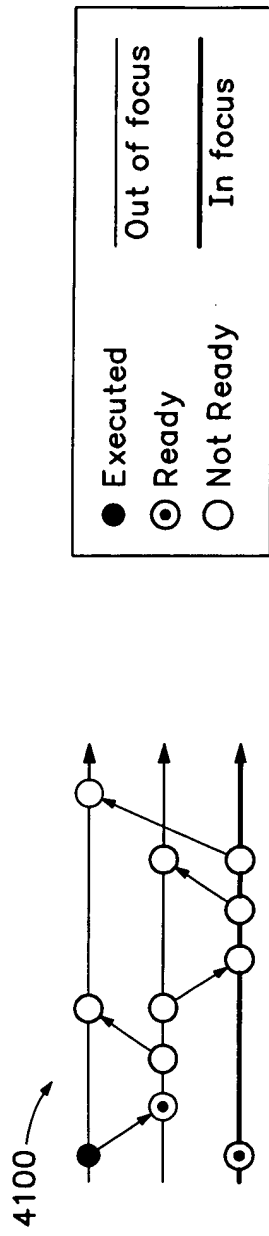


FIG. 41A
(PRIOR ART)

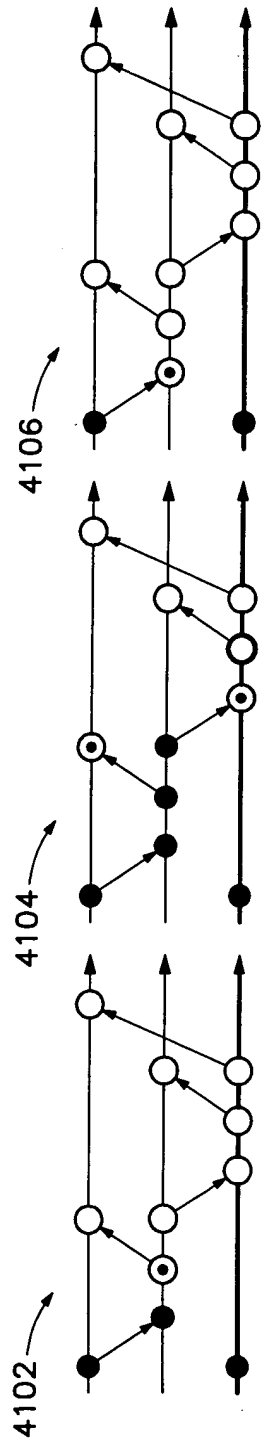


FIG. 41B
(PRIOR ART)

FIG. 41C
(PRIOR ART)

FIG. 41D
(PRIOR ART)